



# California Regional Water Quality Control Board Central Valley Region

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### ***CALIFORNIA WATER CODE 13267 ORDER FOR TECHNICAL AND MONITORING REPORTS, DREW TUNNEL, NEVADA COUNTY***

This Order requires Newmont USA Limited (Newmont) to submit technical and monitoring reports pursuant to California Water Code (CWC) section 13267, which authorizes the Regional Water Board to require such reports. The required reports pertain to the Drew Tunnel in Nevada County. On 1 May 2007, the Regional Water Board distributed a draft cleanup and abatement order (CAO) for the Drew Tunnel for comments. The draft CAO named Newmont as responsible for the required work. In response, Elizabeth H. Temkin submitted letters dated 6 June and 14 June 2007 on behalf of Newmont. Regional Water Board staff reviewed the Newmont letters. Staff determined that it is appropriate to issue an Order under CWC section 13267 rather than a CAO at this time given the nature of the information currently needed.

The 1 May 2007 draft CAO identified the need for further investigation of sources of water and pollutants in the Drew Tunnel discharge and an assessment of possible treatment and source control methods to reduce the quantity of pollutants discharged to waters of the state. These studies are necessary steps towards providing a remedy for the discharge from the Drew Tunnel. Appropriate remedial actions will be determined at a later date.

Regional Water Board staff understands that Newmont has had difficulty accessing the site in the past, and that Newmont intends to inform and coordinate with the City of Grass Valley at every phase of this work. Staff believes this communication effort is critical to resolving the Drew Tunnel discharge. In addition, we consider that owners of property overlying the mine workings that unreasonably deny access for investigation or cleanup activities are permitting the continued discharge of waste, and could be subject to cleanup liability under CWC section 13304. Regional Water Board staff will assist Newmont, as appropriate, to obtain reasonable access on reasonable terms to private property in order for Newmont to complete the investigations and technical reports required by this section 13267 Order in a timely manner.

**California Water Code Section 13267 Order for Technical Reports**

Section 13267 of the California Water Code states, in part: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

Section 13268 of the California Water Code states, in part: *(a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying and information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).*

*(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*

In order to ensure that the Regional Water Board has sufficient information to determine an appropriate remedy for the Drew Tunnel discharge in a timely manner and to ensure compliance with applicable laws and regulations, Newmont is hereby directed to submit the following technical reports. The Regional Water Board orders Newmont to conduct this investigation and submit technical and monitoring reports because Newmont is suspected of having discharged or discharging waste that could affect the quality of water within Wolf Creek. The evidence that the Regional Water Board staff contends supports requiring Newmont to conduct this investigation is set forth in the findings of the draft CAO. Newmont disputes that it has discharged or is discharging waste.

Pursuant to Section 13267 of the California Water Code, Newmont shall submit the following technical reports:

1. **By 20 August 2007**, Newmont shall submit a *Drew Tunnel Investigation Workplan* (hereafter Workplan) to investigate the nature and extent of the factors contributing to the Drew Tunnel discharge. The Workplan shall include, at a minimum, the following:
  - a. A description of the Drew Tunnel and its associated mine workings and discharge area, a summary of previous investigations and existing data, a conceptual site model, and an identification of data gaps.

- b. A plan to investigate the source(s) of water and pollutants in the discharge and the extent of the area contributing to the discharge. This plan should include maps and cross-sections based on available information showing the lateral and vertical extent of the mine workings including all known or suspected drainage tunnels. The plan must consider field characterization of surface hydrogeologic features that could allow surface water to enter the mine workings. The plan must consider obtaining continuous water level measurements of the main body of the mine workings drained by the Drew Tunnel.
- c. A plan to compare the quality of water in the mine to the tunnel discharge.
- d. A description of potential water management alternatives and a plan to investigate significant data gaps for selection of a water management alternative for the Drew Tunnel discharge. The alternatives should consider reducing and managing sources of water and/or pollutants, and treatment of the discharge both with and without discharge to the City of Grass Valley wastewater treatment plant.
- e. A time schedule for conducting the proposed work and submitting the *Drew Tunnel Investigation Report* required in item 2, below, on or before 30 May 2008.

The Workplan shall be implemented in accordance with the approved time schedule. Implementation may be phased. After Regional Water Board approval of the time schedule, it shall become an enforceable part of this CWC section 13267 order.

- 2. **By 30 May 2008**, Newmont shall submit a *Drew Tunnel Investigation Report* in accordance with the time schedule in the approved Workplan, including the following:
  - a. A narrative summary of the results of the approved Workplan, including field investigations and water management studies.
  - b. A description of all areas or features identified as sources and/or potential sources of water and pollutants in the Drew Tunnel discharge, including maps and cross-sections showing the lateral and vertical extent and locations of sources of water and pollutants and their individual estimated relative contribution.
  - c. All data and laboratory results and tabular and/or graphical summaries of the results.
- 3. Within **60 days** of Regional Water Board staff concurrence with the *Investigation Report*, Newmont shall submit a *Drew Tunnel Alternatives Evaluation Report*. The *Alternatives Evaluation Report* shall revise (where appropriate) existing reports as described in Findings 21, 22, 23, 25, 27, 29, 30, and 31 of the 1 May 2007 draft CAO to include new data. The *Alternatives Evaluation Report* shall assess the applicability and effectiveness of potential alternatives including source control, source removal, and/or treatment and removal of pollutants from the Drew Tunnel discharge. The *Alternatives Evaluation Report* shall have sufficient detail to provide the basis for decisions regarding subsequent management actions.

Any technical report required herein that involves planning, investigation, evaluation, engineering design, or other work requiring interpretation and proper application of engineering or geologic sciences shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

Please be advised that failure to comply with the requirement to submit technical reports may result in enforcement action, including assessment of civil liabilities of up to \$1,000 per day for late or inadequate reports. If Newmont finds that it may not be feasible to complete either report according to the approved time schedule, or contends that timely performance is prevented or delayed by events which arise from causes not reasonably foreseeable and beyond the reasonable control of Newmont, Newmont may request additional time and shall state the reason for the request. Time schedules for report submittal may only be extended by the Executive Officer of the Regional Water Board.

If you have any questions, please call Steve Rosenbaum at (916) 464-4631.

*original signed by*  
PAMELA C. CREEDON  
Executive Officer

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